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### **Advisory Opinion 08-014**

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2007). It is based on the facts and information available to the Commissioner as described below. All public data the Commissioner relied upon to issue this opinion are available for public inspection and copying at the office of the Information Policy Analysis Division (IPAD), unless the data have been disposed of in compliance with the state Records Management Act.

#### **Facts and Procedural History:**

On May 7, 2008, IPAD received a letter dated same, from Kevin Rupp and Erin Ische. In their letter, Mr. Rupp and Ms. Ische asked the Commissioner to issue an advisory opinion regarding the classification of certain data School District 31 (Bemidji) maintains.

IPAD, in a letter dated May 22, 2008, invited the Minnesota Department of Education (MDE) to submit comments. On June 11, 2008, IPAD received a response from Amy Roberts, Director of Compliance and Assistance. In a letter dated May 22, 2008, IPAD also invited X, the data subject, to submit comments. S/he did not do so.

A summary of the facts provided by Mr. Rupp and Ms. Ische is as follows. In the opinion request, they wrote:

...[MDE] received a report alleging maltreatment of a student by a teacher employed by the District. This report was made pursuant to Minn. Stat. § 626.556. Subsequently, the MDE conducted an investigation into the alleged maltreatment. The School District conducted its own internal investigation as well.

...the MDE issued its determination regarding the allegations of maltreatment. This determination was sent to the School District by the MDE in the form of a letter....

In its determination, the MDE concluded there was a preponderance of the evidence that maltreatment occurred on the part of the teacher. Based on the MDE's determination, the School District entered into a Resolution Agreement with the teacher...[The Agreement establishes that the District disciplined the teacher. The Agreement also represents the final disposition of the disciplinary action.]

The School District now wishes to determine the classification of the MDE's report.

Mr. Rupp and Ms. Ische provided a copy of the report to the Commissioner.

**Issue:**

Based on Mr. Rupp and Ms. Ische's opinion request, the Commissioner agreed to address the following issue:

Is the Minnesota Department of Education's (MDE) determination regarding a report of alleged student maltreatment public data on individuals pursuant to Minnesota Statutes, section 13.43, subdivision 2(a)(5), or alternatively, is the MDE's determination private data on individuals pursuant to Minnesota Statutes, section 626.556, subdivision 11(a), and Minnesota Statutes, section 13.03, subdivision 4(c)?

**Discussion:**

Pursuant to Minnesota Statutes, Chapter 13, government data are public unless otherwise classified (see section 13.03, subdivision 1).

Section 13.43 classifies data on individuals who are current or former employees of a government entity. Subdivision 2 lists the types of personnel data that are public and subdivision 4 classifies most other types of personnel data as private.

When a government entity has taken disciplinary action against an employee and a final disposition has occurred, the following data are public under section 13.43, subdivision 2(a)(5): the final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis for the action.

Mr. Rupp and Ms. Ische wrote, "The MDE's determination was clearly used as a basis [of the disciplinary action] and includes data on the specific reasons for the School District's disciplinary action against the teacher. This analysis would tend to suggest that the MDE's determination is public data."

The MDE argues that the data in the report are private because Minnesota Statutes, section 626.556, subdivision 11(a), classifies as private "all records concerning individuals maintained by a local welfare agency or agency responsible for assessing or investigating the report under this section..." (See also section 13.03, subdivision 4(c).)

The Commissioner previously has opined about the balance the Minnesota Legislature has struck in section 13.43. Of relevance here:

In this particular balancing of interests, the public is able to find out that charges or complaints have been made against an employee and how the government entity is handling those complaints or charges. If a final disciplinary action is imposed on the employee, the public will also be able to learn the details of the action itself and why the action was taken, including all data that supports the action. If no disciplinary action is imposed or if a proposed disciplinary action is overturned because the employee grieved a proposed disciplinary action under a collective bargaining agreement, the employee's interest is protected because there is very limited dissemination to the public of any details about the allegations.

(See Advisory Opinion 94-042.)

Here, a final disposition has occurred and the District used the MDE's determination in the maltreatment report as a basis for disciplining X. In addition, the report includes data on the specific reasons for the District's disciplinary action against X. As stated above, data documenting the basis for the disciplinary action and the specific reasons for the disciplinary action are public under section 13.43, subdivision 2(a)(5). Although the data in the report are classified as private pursuant to section 626.556, subdivision 11, pursuant to section 13.03, subdivision 4(a), the data can change classification:

The classification of data in the possession of an entity shall change if it is required to do so to comply with...a specific statute applicable to the data in the possession of the disseminating or receiving agency.

Thus, it is the Commissioner's opinion that any data in the maltreatment report that document the basis for the disciplinary action against X and any data in the report that represent the specific reasons for the disciplinary action against X are public data. Remaining data in the report that do not document the basis for the disciplinary action or represent the specific reasons for the disciplinary action are private pursuant to section 626.556, subdivision 11.

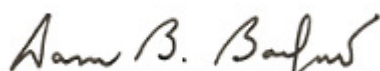
The Commissioner notes the following. In releasing to the public the data in the report that document the basis for the disciplinary action against X and that represent the specific reasons for the disciplinary action against X, it appears the District also would release private data about the victim, and might release private data about other students and District employees other than X. (The District is in the best position to determine whether the identities of these individuals would be revealed.) The data about students are classified as private pursuant to sections 13.32 and 626.556, subdivision 11. The data about employees other than X are classified as private pursuant to sections 13.43 and 626.556, subdivision 11.

The Commissioner concludes it would be incongruous for the District to release private data about District students and private data about District employees other than X when releasing public data related to the disciplinary action taken against X. (Pursuant to Minnesota Statutes, section 645.17, when ascertaining legislative intent, the Legislature does not intend a result that is absurd or unreasonable.) Therefore, the District must redact any such data in the report.

### **Opinion:**

Based on the facts and information provided, my opinion on the issue that Mr. Rupp and Ms. Ische raised is as follows:

Data in the Minnesota Department of Education's (MDE) determination regarding a report of alleged student maltreatment that document the basis for the disciplinary action and the specific reasons for the disciplinary action are public under section 13.43, subdivision 2(a)(5). However, any of these data that identify District students, including the victim, and other District employees are private (see sections 13.32, 13.43, and 626.556, subdivision 11). In addition, any data in the report that do not document the basis for the disciplinary action or represent the specific reasons for the disciplinary action are private pursuant to section 626.556, subdivision 11.

Signed:   
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Dana B. Badgerow  
Commissioner

Dated: June 26, 2008